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E.A.R. v. State of Florida

SC08-506

>> THE LAST CASE ON OUR CALENDAR FOR TODAY IS E.A.R. V. STATE. MS. PORTER?

>> MAY IT PLEASE THE COURT, MY NAME IS ELISABETH PORTER ON BEHALF OF E.A.R. CHILD. THE FOURTH DISTRICT COURT OF APPEALS FROM THE SECOND DCA AND BY EXTENSION WITH THE FIRST AND THE FIFTH DISTRICT COURTS OF APPEAL.

THE ISSUE IN THIS APPEAL IS WHETHER THE FOURTH IS CORRECT THAT 98544B SHOULD BE INTERPRETED NARROWLY OR THAT IT SHOULD BE READ WITH THE OTHER PARTS OF THE STATUTE --

>> COULD WE GO TO THE REAL APPLICATION OF THIS? WE CAN SIT HERE ALL DAY AND TALK ABOUT THE ESOTERIC APPLICATIONS OF THIS RULE OR THAT RULE OR WHAT JUDGES SHOULD OR SHOULD NOT DO, AND ONE CAN MAKE AN ATTRACTIVE ARGUMENT THAT IF YOU READ ALL THESE DIFFERENT SECTIONS, THIS IS WHAT'S BEING DONE, THAT YOU TAKE A LOOK AT THE NEEDS AND THE LEAST RESTRICTIVENESS IN THAT DISPOSITION HEARING.

BUT THE THING THAT KEEPS JUMPING BACK AT ME THAT I NEED SOME HELP ON AND WHY I'M TROUBLED WITH IT IS THAT OUR STATUTES -- AND STOP ME IF YOU THINK I'M WRONG ON THIS BECAUSE I NEED YOUR HELP -- BUT THE STATUTES AS WE LOOK AT THE DIFFERENCE BETWEEN MODERATE RESTRICTION OR HIGH RESTRICTION IS ALWAYS DESCRIBED IN TERMS OF NOT SERVICES.

AND WE SITTING HERE CANNOT TELL WHAT SERVICES ARE THERE, BUT

ALWAYS IN TERMS OF WHAT ARE THE
RESTRICTIONS ON THE INDIVIDUAL.

>>> PLEASE RISE.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE BE
SEATED.

>> THE LAST CASE ON OUR CALENDAR
FOR TODAY, IS E.A.R. VERSUS THE
STATE.

>> MAY IT PLEASE THE COURT.
MY NAME IS ELISABETH
PORTER ON BEHALF OF THE
PETITIONER E.A.R., A CHILD.
WE ARE HERE ON AN EXPRESS AND DIRECT
CONFLICT.

THE FOURTH DISTRICT
COURT OF APPEALS CERTIFIED
CONFLICT WITH MS SECOND DCA
DISTRICT WITH FIRST AND
FIFTH DISTRICTS OF APPEAL.
THE ISSUE IS WHETHER THE FOURTH IS
CORRECT THAT 9854337B SHOULD
BE INTERPRETED NARROWLY OR
WHETHER THE FIRST, SECOND OR
FIFTH DISTRICT COURTS ARE CORRECT
THAT IT SHOULD BE READ IN PARI
MATERIA WITH OTHER PARTS OF
THE STATUTE.

>> CAN WE GO TO THE REAL
APPLICATION OF THIS.
WE CAN SIT
HERE ALL DAY AND TALK ABOUT THE
ESOTERIC APPLICATION, OF THIS
RULE OR THAT RULE, OR WHAT
JUDGES SHOULD OR SHOULD NOT
DO.

AND ONE CAN MAKE AN ATTRACTIVE
ARGUMENT, YOU IMMEDIATE
DIFFERENT SECTIONS, THIS IS
WHAT IS BEING DONE, YOU TAKE A
LOOK AT THE NEEDS AND THE
LEAST RESTRICTIVE NECESSITIES
IN THAT DISPOSITION HEARING,
BUT THE THING THAT KEEPS
JUMPING BACK AT ME THAT I NEED
SOME HELP ON, WHY I'M TROUBLED
WITH IT IS THAT OUR STATUTES
AND --

>> IF YOU THINK I'M
WRONG ON IT, BECAUSE I NEED
YOUR HELP ON THIS, WE LOOK AT
THE STATUTES, THE DIFFERENCES

BETWEEN MODERATE RESTRICTION OR HIGH RESTRICTION IS ALSO DESCRIBED IN TERMS OF NOT SERVICES, AND WE'RE SITTING HERE, CANNOT TELL WHAT SERVICES ARE THERE, BUT IT IS ALSO, IN TERMS OF WHAT ARE THE RESTRICTIONS ON THE INDIVIDUAL.

AND IN THIS CASE, BETWEEN THE MODERATE AND THE HIGH, IT IS THE QUESTION OF -- REALLY ACCESS TO THE COMMUNITY, AND THAT IS NOT A SERVICES OR THE REHABILITATION.

I DO SEE THAT

THERE WAS AN ARGUMENT, IT WAS ARGUMENT, NOT FACT, THAT THIS HIGHER LEVEL WON'T SERVE THE NEEDS THEREOF, YOU KNOW, THAT DOESN'T -- MATTER -- WHAT IS A TRIAL JUDGE TO DO WHEN SITTING THERE, HOW CAN THAT JUDGE, WHEN OUR STATUTES DON'T TELL US WHAT SERVICES GO WITH WHICH ONE OF THESE, REALLY GET INTO A COMPARISON WITH REGARD TO THE NEEDS OF THE CHILD, AS IT MAY APPLY TO THE LEAST RESTRICTIVE ENVIRONMENT IT APPEARS IS GOING TO BE MADE? DO YOU UNDERSTAND MY FRUSTRATION?

THIS JUDGE WAS FACED NOT WITH NEEDED DRUG TREATMENT OR MENTAL HEALTH TREATMENT, SEEMS ALL HAVE ACCEPTED IT WASN'T A RISK FACTOR TO BOTH THE CHILD AND THE COMMUNITY, THAT WAS THE FACTOR, AND THE JUDGE LISTED THOSE REASONS -- A -- INVOLVED IN -- HAS BEEN INVOLVED WITH SOME DRUGS, THOSE KINDS OF THINGS. DID YOU UNDERSTAND MY QUESTION?

>> WHAT IS THE REAL WORLD ANSWER AS A JUDGE SITTING THERE, WHAT ELSE CAN A JUDGE PUT IN THE ORDER OTHER THAN "THIS IS WHY I THINK YOU SHOULD BE IN A MORE RESTRICTIVE ENVIRONMENT"?

>> QUESTION FOR THE TRIAL COURT IN TERMS OF THE CHILD'S NEEDS, CHILD CARE NEEDS, IN TERMS OF

RESTRICTIVENESS LEVEL, WHY DUE PROCESS CONCERNS COME INTO PLAY WITH REGARD TO LEVELS OF RESTRICTIVENESS, NOT JUST LEVEL OF ACCESS TO COMMUNITY.

IT IS LENGTH OF THE SENTENCE, LENGTH OF SENTENCES CONCLUDED IN BLUE PRINT ON THE COMMISSION REPORT.

SO, FOR EXAMPLE, MODERATE -- >> IN THIS CASE, THEN, IS THERE A PROBLEM WITH THE LENGTH OF THE INCARCERATION?

>> THERE -- IT WAS A LEGAL SENTENCE IN TERMS OF LENGTH, BUT TO MAKE A POINT THAT THE TRIAL COURT IS NOT JUST CONSIDERING WHETHER THE CHILD HAS ACCESS TO THE COMMUNITY IN A MODERATE-RISK COMMITMENT PROGRAM OR WHETHER THEY ARE IN A JUVENILE JAIL IN TERMS OF A LEVEL EIGHT COMMITMENT PROGRAM. IT IS ALSO WHEN THEY GET FOUR TO SIX MONTHS IN A LEVEL SIX, OR IF THEY GET NINE TO 18 MONTHS IN A LEVEL.

>> SO IN THIS CASE, THEN, WHAT YOU ARE SAYING IS THAT THERE WOULD HAVE BEEN A DIFFERENT TERM OF -- OF RESTRICTIONS APPLIED FROM A MODERATE TO A HIGH.

>> CORRECT.

>> AND THAT DOESN'T SEEM TO JUMP OUT AT ME UNDER THIS -- THIS BRIEF OR THESE FACTS.

>> WELL, WHEN YOU LOOK AT THE -- THAT SHOULD JUMP OUT TO YOU IN SECTION C OF THE BRIEF AND SECTION B OF THE BRIEF, NOT SECTION A.

>> YOU ARE SAYING THIS IS WHAT THE NEEDS ARE. HOW LONG DOES THIS -- THIS INDIVIDUAL NEED TO BE IN THIS RESTRICTIVE CIRCUMSTANCE FOR PURPOSES OF REHABILITATION 985433 REGARDING PREDISPOSITION REPORT REQUIRES ASSESSMENT OF TRIAL NEAR MOST APPROPRIATE PLACEMENT.

>> RIGHT.

>> 985433 --

>> I UNDERSTAND ALL THOSE.
>> I'M NOT SURE -- FOURTH
DISTRICT COURT OF APPEAL
UNDERSTANDS ALL THOSE BECAUSE
THEY HAVEN'T BEEN APPLYING
9854336 A THROUGH H, AT THAT
POINT IN TIME,
>> WHAT I'M SAYING IS IF THIS
TRIAL JUDGE -- HAD DONE THESE
FACTORS AND THEN HAD STATED
THAT THIS IS THE APPROPRIATE
SENTENCING, NOT ONLY FOR THOSE BUT
ALSO FOR THE PERIOD OF -- OF
-- OF RESTRICTIVENESS, THAT
WOULD HAVE SATISFIED IT?
>> IF THE TRIAL COURT IN THIS
CASE HAD LOOKED AT THE
PREDISPOSITION REPORT
WHICH OF CONSIDERED 985433800
A THROUGH, JUVENILE THE PROCESS
COMMITTEE IS WAITING -- COURT
TO -- A FORUM TO MAKE IT
EASIER FOR TRIAL COURTS, THEY
WOULD LOOK AT THE 985433
A THROUGH H REASONS BY INCLUDING
SPURIOUSNESS OF THE
REPORTED THINGS LIKE THAT,
THEN YOU, THE TRIAL COURT COULD
FILE 9854337 B, WHICH SAYS
TRIAL COURT SHALL STATE -- FOR
THE RECORD THE REASONS WHY AND
THEN --
[INAUDIBLE]
AND THE TRIAL COURT IS
DISREGARDING THE ASSESSMENT
AND RESTRICTIVENESS OF A
RECOMMENDED -- BY THE
DEPARTMENT.
>> THAT IS -- THE ASSESSMENT,
TRYING TO SAY WHO THE --
PARTIES OF CENTER, ONLY YOU
REPRESENT THE JUVENILE.
>> UM-HMM.
>> BUT IS THE -- YOU KNOW A
LOT OF THE TIMES, WHEN DEALING
WITH -- THE DISCRETION OF DJJ
I -- I MIGHT AS A JUDGE THINK
I WANT THAT CHILD TO GO TO
THIS FACILITY, AND -- THAT
CAN'T SAY THAT EVEN THOUGH YOU
KNOW THAT FACILITY IS GOING TO
BE THE BEST FACILITY FOR
THAT CHILD, BUT DOES DJJ
AND THE STATE -- AND THE

DEFENDANT ALL CONCUR THAT THE MODERATE RISK WAS AN APPROPRIATE PLACEMENT FOR THIS PARTICULAR JUVENILE?

THE PROCESS AS A CHILD, PLEAS TO AN OFFENSE TO TRIAL IN THIS CASE YOU HAVE ANOTHER CASE IF YOU HAVE A MULTIPLE, BOTH DISCIPLINARY STAFFING AT WHICH USUALLY THE CHILD, STATE, THE DEFENSE ATTORNEY AND DJJ, AS WELL AS THE PARENT ARE REPRESENTED.

AFTER THE ACTUAL --

>> WHAT HAPPENED IN THIS --

>> IN THIS CASE IT DOESN'T SAY WHO WAS AT THE ACTUAL STAFFING.

HOWEVER, THERE WAS A STAFFING, AND THERE WAS A PREDISPOSITION REPORT PREPARED, AFTER ANALYZING THE WHOLE FAMILY SITUATION THAT PRIOR EVERYTHING GOING ON, THE CHARGES, THE -- THE DEPARTMENT OF JUVENILE JUSTICE RECOMMENDED THE LEVEL SIX COMMITMENT PROGRAM.

>> AND THE STATE ARGUED FOR A HIGHER ONE THAT HAD --

>> WHAT HAPPENED WAS AT THE DISPOSITION HEARING THE FOSTER MOTHER WHOSE CHECK E.A.R. ATTEMPTED TO CASH SAID MY DAUGHTER'S IMPERMISSIBLE CONSIDERATION, IT IS NOT ABOUT THE NEEDS OF THIS CHILD, MY DAUGHTER IS DOING BETTER. THIS CHILD -- THIS CHILD, IS -- A PROBLEM IN MY HOME, MY HOME, SO IS MUCH BETTER, NOW THAT HE IS OUT OF THE HOME.

>> THAT IS A DIFFERENT ISSUE WITH REGARD TO THAT COURT.

>> THE TRIAL COURT WENT THROUGH -- IN FAIRNESS, DISCUSSED WHAT HE DID BECAUSE WE ARE TRYING TO GET TO THE BOTTOM LINE HERE, THAT WASN'T THE ONLY THING, IT WAS A RUN, THERE WAS INCREASED LEVEL OF VIOLENCE, AND THREATS -- WERE THERE THREATS MADE THAT --

>> NO, THERE WEREN'T THREATS. IT WAS ANGRY ARE OUTBURSTS,

THEN THEY USED STANDARD
PREDISPOSITION REPORT LANGUAGE
TO INCREASE THE LEVEL OF
ATTENTION THAT THE CHILD WOULD
GET -- IN TERMS OF --

>> WE ARE TRYING TO ESTABLISH
SOMETHING IMPORTANT WITHOUT
QUIBBLING THIS
JUDGE LOOKED AT THE PREDISPOSITION
REPORT, AND SAID NO
I THINK THAT THE LEVEL OF --
OF RESTRIKION NEEDS TO BE
HIGHER.

>> I AGREE, THE COURT LOOKED
AT IT AND SAID THE LEVEL OF
RESTRICTION NEEDS TO BE HIGHER.
WHAT WE ARE DISCUSSING TODAY
IS MAINLY, HOW YOU DO THAT,
AND WHY DO YOU DO THAT, AND --

>> THAT IS WHAT -- STRIKES ME
IS THAT THE FOURTH DISTRICT,
WOULD -- WOULD -- SAID THAT
WHAT -- THIS TRIAL JUDGE DID
WAS AN ADEQUATE STATEMENT TO
-- TO SET OUT WHAT THE TRIAL
JUDGE'S FINDINGS WERE, AND IN
RESPECT TO THIS CHILD, AND
ISN'T THAT WHAT THE FOURTH
DISTRICT BASICALLY --

>> THE FOURTH DISTRICT DID SAY
THIS THE PROBLEM IS FOURTH
DISTRICT IS NOT -- HAS ONLY
REVERSED FOUR CASES SINCE
2002 WITH REGARD TO THIS
ISSUE, THE FOURTH DISTRICT IS
NOT APPLYING THE SAME APPROACH
THAT THE FIRST, SECOND AND
FIFTH DISTRICTS APPLY.

>> MY CONCERN IS WHETHER WE
GET DOWN TO THIS BEING
SOMETHING WHERE THERE IS WE'RE
SO HEMMED IN BY FORM THAT WE
DON'T REALLY GET TO THE
SUBSTANCE OF WHAT THE TRIAL
JUDGE IS DOING, AND THE
APPLICATION OF THE INTENT OF
THIS STATUTE.

AND I'M VERY CONCERNED THAT WE
-- WE'RE JUST TURNING THIS INTO A
MATTER OF SEMANTICS.

>> IT IS NOT A MATTER OF
SEMANTICS, THE JUVENILE SYSTEM
IS ABOUT REHABILITATION RATHER
THAN PUNISHMENT.

>> LET ME LET ME -- LET ME ASK YOU ABOUT THAT, BECAUSE IT SEEMS THE STANDARD THAT THE SECOND DCA HAS ADOPTED AND ON THE COURTS THAT THE FOURTH IS DISAGREEING WITH IS A STANDARD THAT ACCEPTS WHAT YOU JUST SAID.

AND REQUIRES THAT THE FOCUS IN THE DISPOSITION BE ON THE NEEDS OF THE CHILD.

BUT IT SEEMS TO ME THAT YOU LOOK AT THE STATUTORY SCHEME AND THESE -- NEEDS OF THE CHILD ARE IMPORTANT IN THE SCHEME, BUT PUBLIC SAFETY IS ALSO A SALIENT FACTOR, THROUGHOUT THE SCHEME, AND AS A MATTER OF FACT, THE LEGISLATURE HAS SAID THAT IT IS A POLICY OF THE STATE WITH RESPECT TO JUVENILE JUSTICE AND DELINQUENCY PROVISION TO FIRST PROTECT THE PUBLIC FROM ACTS OF DELINQUENCY.

YOU GO THROUGHOUT THIS AND YOU LOOK AT THE DEFINITION OF THE DIFFERENT, THE DIFFERENT RESTRICTIVENESS LEVELS THROUGHOUT, THERE IS CONSIDERATION OF THE RISK TO THE CHILD, AS WELL AS THE PUBLIC SAFETY.

AND THAT IS THAT IS THROUGHOUT THIS WHOLE SCHEME. AND THE TEST THAT THE FOURTH DISTRICT HAS REJECTED HERE SEEMS TO BE ATTACHED -- A TEST THAT TAKES FOCUS AWAY FROM PUBLIC SAFETY ENTIRELY, AND WHY WOULD YOU SAY THAT IS NOT THE CASE?

>> I WOULD SAY THAT THERE ARE TWO POINTS TO THAT ISSUE. FIRST OF ALL, PUBLIC SAFETY IS A CONCERN, BUT STILL UNDER 898501, THE NEEDS OF THE -- 985001 NEEDS OF CHILD OF FIRST CONSIDERATION IN TERMS OF REHABILITATION AND DUE PROCESS WITHOUT SPECIFICITY TO ANSWER JUSTICE WELLS' QUESTION YOU CAN'T HAVE MAINTAINING FULL --

REVIEW CLEAR UNDER 985437B, YOU ARE INTENDED TO HAVE APPELLANT REVIEW.

>> -- I MUST -- ENDED UP ANSWERING MY QUESTION -- UNDERSTANDABLE -- [INAUDIBLE] CONCERNED THAT JUVENILE -- CONCERNED ABOUT PROCESS, IN TERMS OF THE HE DETERMINATION SAFETY WE FIRST WE LEAVE THAT INITIALLY TO THE DEPARTMENT OF JUVENILE JUSTICE TO DETERMINE THE THREAT AND, THEREFORE, THE RECOMMENDED RESTRICTIVENESS LEVEL AND THE NEED.

AND IN THIS CASE, THE DEPARTMENT OF JUVENILE JUSTICE DECIDED MODERATE RISK WAS APPROPRIATE, BUT -- I DON'T KNOW IF YOU ANSWERED THE STATE, ASK THE JUDGE TO GO WITH THE HIGHER LEVEL RESTRICTIVENESS BECAUSE THEY DIDN'T THINK DJJ ADEQUATELY CONSIDERED THE PUBLIC SAFETY ISSUES, IN THEIR --

>> THE STATEMENT AT THE TRIAL COURT SPONTANEOUSLY ON ITS OWN DISREGARDED THE RECOMMENDATION OF THE DEPARTMENT, AND WITH REGARD TO PUBLIC SAFETY, IN DJJ'S REPORT THIS YEAR 2008, "GETTING SMART ABOUT JUVENILE JUSTICE" -- EMPHASIS IS ON MORE APPROPRIATE, LESS RESTRICTIVE PROGRAMS.

>> WITH DUE RESPECT THAT IS NOT LAW.
OKAY.

>> NO, IT IS NOT LAW BUT -- PERSUASIVE IN TERMS OF NOT HAVING AN AMICUS BRIEF FROM DJJ SUPPORTING OUR POSITION.

>> BECAUSE THIS CASE HAS BEEN SEALED SINCE THE BEGINNING IN REGARDS TO THIS CASE THE PROBLEM IS THE FOURTH DISTRICT COURT OF APPEAL ACCEPTS ANY REASON, SO LONG AS IT IS -- SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE.

THE FIRST, SECOND
AND FIFTH DISTRICT COURT OF
APPEALS REQUIRE VALID REASONS
SUPPORTED BY EVIDENCE.

>> WHAT -- THIS TRIAL
JUDGE HAVE PUT IN THIS ORDER,
BECAUSE HE TALKS ABOUT THE --
FACT THAT THIS JUVENILE IS
UNGOVERNABLE,
A FLIGHT RISK, TALKS ABOUT
GANG AFFILIATION,
UNCONTROLLED ANGER, ALL THESE
THINGS, HE TALKS ABOUT ALL OF
THAT IN THE ORDER.

SO WHAT MORE IN YOUR OPINION,
DID THE TRIAL JUDGE NEED TO PUT
IN THIS ORDER IN ORDER TO
COMPLY WITH -- THE STANDARD
THAT YOU BELIEVE IS APPLICABLE
TO THESE KINDS OF ORDERS?

>> IN ANSWER TO YOUR QUESTION,
IT -- AS SIMPLE AS IT -- THERE
IS A LIMITED -- ROLE FOR THE
JUVENILE COURT, WE CAN'T AS
JUVENILE COURT JUDGES SIMPLY
ANSWER A CHILD QUESTION WHY
BECAUSE -- YOU HAVE TO HAVE A
REASON WHY.

SO YOU HAVE TO SAY
THE REASON FOR THE LEVEL SIX IS
INADEQUATE BECAUSE THIS
CHILD NEEDS PERIMETER
FENCING, NEEDS 24-HOUR
SUPERVISION, NINE TO 18 MONTHS --

>> THAT IS NOT IMPLICIT IN THE
FACT THAT HE RUNS -- IS RUNNING
ALL THE TIME, AND THAT HE IS
UNGOVERNABLE, HAS BEEN OUT
OF THIS COMMUNITY, AND STILL
CONTINUES TO COMMIT THESE
DELINQUENT ACTS.

>> CORRECT.

I'M ARGUING THAT
IS NOT IMPLICIT, IN FACT THERE
IS AN INDICATION FROM I BELIEVE
THE FIRST DCA, WHICH IS CITED
IN MY BRIEF, WHICH SAYS YOU
NEED TO SAY WITH SPECIFICITY
WHY GOING FROM LEVEL SIX TO A
LEVEL EIGHT.

>> -- IN THIS ORDER, THAT
BECAUSE OF ALL THESE THINGS,
THAT I HAVE ALREADY TALKED
ABOUT, IT DEMONSTRATES THAT

HIM BEING IN A SITUATION THAT IS NOT BASICALLY SECURED, MORE SECURE, THAT HE NEEDS TO BE IN THAT WOULD HAVE BEEN SUFFICIENT.

>> RIGHT, IN THIS CASE THERE IS NO SHOWING THAT THIS CHILD HAS NONVIOLENT OFFENSES -- ONLY HAD GANG AFFILIATION WHEN HOME, TAKEN IN BY A FOSTER MOTHER, BECAUSE SHE WAS FRIENDS -- THE DAUGHTER WAS FRIENDS WITH HIM, THERE IS NO SHOWING THAT -- OTHER THAN THAT SHE WANTED HIM OUT OF THE HOUSE, THAT HE WAS A RUNNER.

>> HASN'T THAT JUST REALLY BEEN A MAGIC WORDS TEST, I MEAN ARE YOU JUST LOOKING FOR SOME KIND OF WORDS THAT THE TRIAL JUDGE HAS TO PUT IN THERE, TO MAKE IT FLY?

>> NO, IT IS NOT A MAGIC WORDS TEST.

WHAT IS HAPPENING IN THE FOURTH DISTRICT COURT OF APPEAL, THEY ARE NOT IMPLYING THE IN PARA MATERIA INTERPRETATION THEY ARE READING 4337B ALONE.

>> LET ME ASK YOU THIS, IF A TRIAL JUDGE PUT IN THEIR FINDINGS FOR DEVIATION THAT IT WAS IN THE PUBLIC'S BEST INTEREST FOR SAFETY, DEVIANT, YOUR VIEW IS THAT AN IMPROPER REASON FOR DEVIATING?

>> YES, THAT WOULD BE AN IMPROPER REASON FROM FIRST DISTRICT COURT OF APPEAL SENDING A MESSAGE TO THE COMMUNITY PROTECTING YOUNG FEMALES OR A CHILD'S BROTHER IN PRISON OR PROTECTION OF COMMUNITY, NOT CONSIDERING THE CHILD'S NEEDS ARE NOT --

>> IN YOUR VIEW, UNDER THE STATUTE, IMPROPER REASON FOR A CHILD TO DEVIATE FROM THE RECOMMENDATION --

>> ALONE IT IS AN IMPROPER REASON, BUT IT COULD IN CONJUNCTION WITH OTHER REASONS IT COULD BE PROPER ALONE.

>> THIS CASE, WASN'T IT DJJ --

PBR SAY BECAUSE YOU KNOW,
KNOWING THESE DEPARTMENTS, I
MEAN THERE ARE OBVIOUSLY
CONCERNS ABOUT SAFETY, THEY
ALSO HAVE YOU KNOW IN TERMS OF
LOOKING AT -- LEVEL OF
RESTRICTIVE NECESSITIES USUALLY
THE OPPOSITE THEY WANT MORE
THE JUDGE -- MAYBE WANTS
LESS, WHAT DO THE PBR FIND
ABOUT THIS PERSON,
FLIGHT RISK OR ANYTHING ELSE?
>> THE PREDISPOSITION REPORT
IS ON OUR 44 OF THE -- RECORD,
I CAN'T RECITE IT BECAUSE IT
IS FOR OR FIVE PAGES LONG.
>> I GUESS WHAT I WOULD THINK
THAT I WOULD WANT WOULD BE
ADVOCATING RATHER THAN MAGIC
WORDS WHEN YOU'VE GOT
EXPERTS WHO COME TOGETHER, A
GOOD MULTIDISCIPLINARY REPORT,
GUARDIAN AD LITEM IS THERE,
AND EVERYONE IS THERE TO TRY
TO DECIDE WHAT IS BEST FOR
THIS CHILD, TO GET THIS BACK
ON TRACK, AND THEREFORE, I
WOULD ASSUME WITHOUT THAT
THERE ARE FINDINGS, WHY A
MODERATE LEVEL IS APPROPRIATE
TO THE CHILD, AND IT SEEMS
TO ME, AND THIS MAY BE -- THIS IS
BEYOND THE CASE, BUT IF THE
STATE OR SOMEBODY THINKS
THERE IS A REASON TO GO HIGHER,
THOSE REASONS OUGHT TO BE --
THERE OUGHT TO BE TESTIMONY,
AND THEN DJJ OUGHT TO HAVE A
CHANCE TO RESPOND TO THAT.
WE HAVE A RECORD, AS YOU SAY, NOT
JUST A JUDGE SAYING, I KNOW
THIS HAPPENS, OH, LET'S PUT
THEM OUT OF HIS -- HIGH RISK,
TEACH THEM A LESSON OR
SOMETHING, IS THAT REALLY
WHAT WE WANT TO GET THAT AT?
IS THERE AN ADEQUATE RECORD?
AND IT SEEMS TO ME THAT WHAT
YOU ARE SAYING IS WHEN
A FOSTER MOTHER COMES IN SAYS I
WANT THIS PERSON OUT OF MY
HOUSE, YOU KNOW, WE'VE GOT
SOMETHING AGAIN AN ISSUE OF A
CHILD IN A DEPENDENCE SYSTEM

GETTING LESS PROCESSED THAN --
SOMEBODY HAS PARENTS, BUT THAT
DOESN'T SEEM -- YOU KNOW , THAT IS
WHY I THINK THE FRUSTRATION
I'M HAVING YOU HAVE GOT DJJ
HAS A LEVEL OF EXPERTISE, THE
JUDGE IS GOING TO -- DEPART,
GIVE A HIGHER LEVEL THAN
THE -- CAN'T JUST BE I THINK
THIS IS THE CHILD IS A
FLIGHT RISK, THERE HAS TO BE
SOMETHING IN THE RECORD UNDER
OATH CAN BE CROSS-EXAMINED
ABOUT, ISN'T THAT REALLY
WHAT WE WOULD LIKE TO GET TO.

>> THAT IS WHAT -- TO CLARIFY THE
STATUTE UNDER 9854336, YOUR
HONOR, EVIDENCE TO SUPPORT
THOSE REASONS AND THE TRIAL
COURT UNDER ALL THREE SECTIONS
I'VE BEEN CITING 98543, 4336,
AND 7, IS REQUIRED TO CONSIDER
THE PREDISPOSITION REPORT.

>> ISN'T -- BASIS OF LACK OF
EVIDENCE THAT YOU CLAIM --
>> NONE.

>> YOU ARE CLAIMING CONFLICT
BECAUSE OF A DEFICIENCY IN THE
ORDER, THE WORDS, CORRECT.

>> WE'RE CLAIMING CONFLICT IN
THE DEFICIENCY IN TERMS OF A
DISPOSITION HEARING HAPPENED,
WE -- THERE WAS -- DISPOSITION
ORDER, DISPOSITION ORDER VERY
BASIC STANDARD DISPOSITION
ORDER DOESN'T SAY THE REASONS
WHY, WE ARE CLAIMING IT BASED
ON THE WRITTEN OBJECTION, THAT
WE HAVE IN THE RECORD, WHICH
IS ON 105 OF THE RECORD.

>> WE DO HAVE -- WE DO HAVE THE
REASONS THE JUDGE STATES THE
REASONS --

>> THE JUDGE DID STATE
REASONS.

>> AND THIS JUDGE STATED THE
REASONS IN THE DISPOSITION
HEARING, BUT THERE IS NO
CLARIFICATION --

>> AGAIN -- JUSTICE WELLS IS
ASKING YOU --

>> YES, STATED REASONS BUT NOT

--

>> -- BECAUSE, AS YOU WALKED

IN AND WE'RE LOOKING AT THIS CASE, IT IS A QUESTION OF THE FORM OF THE ORDER, AND WHETHER THOSE FINDINGS, WHETHER YOU NEED TO HAVE PARTICULAR WORDS IN THOSE FINDINGS, AND THEN AS YOU START OTHER THAN THE GANG AFFILIATION, WHICH IS PART OF I THINK THE DISCUSSION, THEN THAT BECOMES A WEIGHING OF THE EVIDENCE, SO IS THIS A CASE WHERE WE ARE SUPPOSED TO BE LOOKING AT WHERE THERE -- I GUESS COMPETENT SUBSTANTIAL EVIDENCE OR A CASE WHERE WE ARE TRYING TO GET THE -- THE FORMAT THAT GOES THROUGH ALL THE DCA'S THE SAME?

>> I'M OVER MY TIME BUT I WOULD LIKE TO ANSWER ALL OF YOUR QUESTIONS.

>> I WOULD LIKE FOR YOU TO.

>> OKAY, SO -- WITH REGARD TO THAT, IF YOU APPLY THE FIRST, SECOND AND FIFTH DISTRICT COURT OF APPEALS REVIEW THE ANALYSIS -- THE SHORTHAND FOR IT IS THE CHARACTERISTICS OF THE RESTRICTIVENESS LEVEL VIS-A-VIS THE CHILD AS SHORTHAND SEEMED THE FOURTH DISTRICT COURT OF APPEAL GOT HUNG UP ON SHORTHAND ANALYSIS ENTIRELY.

>> OR, RESPECTIVELY, THAT IS TALKIE-TALK.

>> ALL RIGHT, SO WHAT DOES IT MEAN?

GOES INTO A PERIOD OF DECISION-MAKING PROCESS, WHAT DOES IT -- SHOULD WE HAVE THE EVIDENTIARY JUSTICE PARIENTE IS SPEAKING OF?

WE DON'T REALLY HAVE A -- ANYTHING OTHER THAN THERE WAS A HEARING, PEOPLE TESTIFIED, THEY DID HAVE THE REPORT, AND DJJ -- I THINK, FOUND, DID THEY NOT, IN THIS REPORT THAT HE WAS A SUBSTANCE ABUSER?

>> HE -- HE DID, USE MARIJUANA.

>> OKAY, SUBSTANCE ABUSER,

THAT THERE WAS THAT THERE WAS
THE BECOMING HIGHER THERE WAS
ESCALATING WHEN YOU LAY OUT
THE FACTS, WHAT THE CRIMES
ARE, THERE IS AN ESCALATING
FACTOR.

>> I DISAGREE THERE IS
ESCALATING, HE WENT FROM
BURGLARY TO TAKING A CHECK, A GRAND
THEFT AND UTTERING OF A
FORGERY, I DON'T THINK THAT
SHOWS AN ESCALATING PATTERN.

>> WE DISAGREE THEN ON THAT.
THAT IS OKAY, BUT IT DOES SHOW
A PATTERN OF -- I'M HAVING --

>> NOT JUST A REVIEW OF
COMPETENT SUBSTANTIAL EVIDENCE
COMPETENT SUBSTANTIAL EVIDENCE
IS REVIEW FOR WHETHER THERE
WAS PREPONDERANCE OF THE
EVIDENCE FOUND IN TRIAL COURT
-- WITH REGARD TO THE FIRST,
SECOND AND FIFTH DISTRICT
COURTS WHETHER A VALID REASON
IS A QUESTION OF LAW, SO IT
WOULD BE DE NOVO REVIEW.

I DIDN'T EXPECT -- I PREPARED
SOMETHING I WAS GOING TO ARGUE
TODAY, AND YES, IF HE WAS
INVOLVED DURING THE
COURSE OF THE QUESTION, BUT IT
NEEDS TO HE INVOLVED --

THERE ARE RULES OF PROCEDURE
GENERATED NEEDS TO EVOLVE
OBVIOUSLY NEEDS TO BE CLEAR
FOR TRIAL COURTS AND FOURTH
DISTRICT COURT OF APPEAL WHAT
ANALYSIS TO APPLY, AND IT NEEDS
TO BE CLEAR FOR THE FOURTH
DISTRICT, WHICH UNLIKE THESE
THREE OTHER DISTRICTS HAS BEEN
APPLYING A DIFFERENT ANALYSIS,
SO IT DOES NEED TO EVOLVE,
THIRD DISTRICT COURT OF APPEAL
HAS NOT EXPRESSED A
CLEAR OPINION ON THIS; A CLEAR
DIVISION BETWEEN DISTRICT
COURT.

THEREFORE, I ASK THIS
COURT -- THIS IS NOT A CASE ABOUT MAGIC
WORDS, STATUTORY
INTERPRETATION, FUNDAMENTAL
FAIRNESS, A CONSTITUTIONALLY
REQUIRED LIMIT ON FRIENDS

PATRIOTS, THE NEED FOR A
PRECISE SPECIFIC DISPOSITION
ORDER TO APPLY MEANINGFUL
REVIEW.

THEREFORE, I WOULD ASK
THIS COURT TO REVERSE, AND
IF THERE IS ANY TIME LEFT
I WOULD LIKE TO RESERVE A FEW
MINUTES FOR REBUTTAL.

>> YOU HAVE GONE OVER THREE
MINUTES, ALMOST OF YOUR --

>> OKAY.

>> GOOD MORNING.

MELANIE DALE

SURBER ON BEHALF OF THE --

>> CAN I ASK WHO YOU ARE

ON BEHALF OF -- ARE YOU --

YOU ARE NOT REPRESENTING DJJ

OR --

>> NO.

I'M HERE FOR THE STATE

FROM THE ATTORNEY GENERAL'S

OFFICE.

>> CONCERNED ABOUT -- BECAUSE

-- [INAUDIBLE]

THAT -- THAT IS WHETHER --

KNOWING -- [INAUDIBLE]

INVOLVING -- JUVENILE --

SYSTEM I THINK A LOT

[INAUDIBLE]

IS THE DJJ SOMETHING ABOUT --

DID THEY FILE AMICUS BRIEF

HERE.

>> NO, THEY DID NOT THE ONLY

ANSWER I CAN GIVE YOU.

>> WAS THERE SOMETHING STATED

THEY DIDN'T FILE BECAUSE IT

WAS CONFIDENTIAL?

I HAVE --

>> I COULD NOT ANSWER THAT

QUESTION, I HAVE NOT BEEN A

PARTY TO ANY OF THAT.

>> OKAY, WHAT DO YOU SEE AS

THE CONFLICT ISSUE?

>> IN THIS CASE IT IS VERY,

VERY DISTINCT WHAT HAS GONE ON

IN THIS CASE, PARTICULARLY FROM

THE FOURTH, THE CONFLICT LIES

SOLELY WITH THE FACT THAT THE

SECOND DCA HAS NOW

REQUIRED BEYOND REASONS FOR

DEPARTING FROM THE

RECOMMENDATION, THEY NOW

REQUIRE THAT A TRIAL COURT

SPECIFY CHARACTERISTICS OF A HIGH VERSUS A MODERATE OR MODERATE VERSUS A LOW COMMITMENT LEVEL, AND EXPLAIN WHY ONE BETTER SERVES THE NEEDS OF THE CHILD.

>> ISN'T IT -- BECAUSE WHAT IS HAPPENING OUT -- [INAUDIBLE] JUVENILE JUDGE, BUT THAT WE'VE GOT TO HAVE IN THE -- USUALLY WHEN DJJ MAKES A RECOMMENDATION -- FIRST OF ALL, IT HAS -- IMPLICATIONS -- [INAUDIBLE] ALSO, IT HAS IMPLICATIONS OF -- [INAUDIBLE] AND ALSO HAS IMPLICATIONS FOR FOR THEM TO HAVE UNIFORMITY THAT IS WHY WE DON'T -- TO -- SENTENCE SPECIFIC PLACE BUT -- WHEN -- WHAT SOUNDS TO ME SECOND DISTRICT -- TRYING TO AVOID IS FOR A JUDGE TO THINK THAT, AGAIN WITHOUT -- OR I THINK, THAT I'M JUST GOING TO GIVE A HIGHER RESTRICTIVENESS, CALL IT PUBLIC SAFETY, THAT IN ORDER FOR THEM TO -- DEPART FROM THE REASONS -- [INAUDIBLE] EXPERTISE OF DJJ THAT WE WANT TO MAKE SURE THAT IT IS NOT JUST MAGIC WORDS, BUT THAT THERE IS -- THE JUDGE -- LOOKING AT WHAT RESTRICTIVENESS AT EACH LEVEL AND SEE HOW IT FITS IN SO WE CAN TAILOR IT MAKE SURE WHY THESE DJJ'S REASON WERE NOT CORRECT, I MEAN ISN'T THAT THAT IS WHAT WE ARE TRYING THAT IS WHAT THE APPELLANT PART IS TO MAKE SURE THAT SOMEONE ISN'T GOING TO SAY YOU KNOW I THINK THAT NEEDS A HIGH LEVEL, I'M GOING TO PUT THEM IN A PRISON SETTING I WANT TO TEACH THEM A LESSON, I'M GOING TO SAY -- [INAUDIBLE] RISK --

>> I THINK WHAT HAS GONE ON, IS CASES SUCH AS MS, AND ACN AND FROM THE OTHER DCA'S USING THE STANDARD HAVE GONE SO

FAIRFIELD, OF THE PLAIN LANGUAGE, AND MEANING OF THE STATUTE THAT WE'RE INTERPRETING THINGS THAT DON'T NEED INTERPRETATION THE STATUTE IS VERY CLEAR, THE DEPARTMENT OF JUVENILE JUSTICE COMPLETES A DISPOSITION REPORT, AND DISCUSSES THE SUITABILITY, AND --

>> THIS -- SO IN THE REAL WORLD HERE THEY JUST DON'T COME UP -- YOU KNOW PROBATION DOESN'T GO I THINK I'M GOING TO GIVE THIS PERSON MODERATE LEVEL; CORRECT?

>> CORRECT, I'M NOT SUGGESTING THAT AT ALL.

>> THEY --

>> THE STATE -- SIGN OFF ON THIS.

>> NO, I WOULD LIKE TO CORRECT SOMETHING, THE RECORD AT THE EDITION POSITIONED HEARING PAGE 18 THE PROSECUTOR SPECIFICALLY STATES I WOULD LIKE A LEVEL EIGHT, FOR A LOCKED DOWN LEVEL SIX.

>> IF YOU WOULD -- GO AHEAD -- I WOULD LIKE YOU TO DO IS COMPLETE YOUR SENTENCE BEFORE JUSTICE PARIENTE'S QUESTION AS TO WHAT SPECIFICALLY THE STATUTE REQUIRES AND THE OTHER DISTRICTS' INTERPRETATION OF THE STATUTE.

>> TO BE FRANK, IT ALL BEGAN IN A DISSENT JUSTICE GRIFFIN WROTE IN JLO, JUSTICE GRIFFIN SPECIFICALLY WROTE THAT THERE IS A REQUIREMENT IN ADDITION TO IN JLO THE JUSTICE GRIFFIN WROTE THIS IS THE JUDGE -- FOLLOWED THE STATUTE AND GAVE REASONS, BUT FAILED TO GO FURTHER AND -- FOR LACK OF A BETTER TERM USE THE V-LANGUAGE ARGUED IN ALL THREE CASES AND JUDGE GRIFFIN SITES SIMPLY TO DEFINITIONS OF RESTRICTIVENESS THERE IS NOTHING IN STATUTES STATES A TRIAL JUDGE MUST MAKE A STATEMENT REGARDING RESTRICTIVENESS.

>> GO AHEAD.

>> ARE CLEAR.

>> THAT IS WHAT I WANT TO ASK YOU ABOUT, AS I WOULD SIT DOWN BETWEEN THE TWO WE'RE TALKING ABOUT HERE.

>> 985433.

>> THE TWO LEVELS.

>> OF TWO LEVELS OF RESTRICTIVENESS.

>> ONE ALLOWS, CERTAINLY ACCESS TO THE COMMUNITY, THE OTHER ONE ONLY DOES SO WITH A JUDGE'S PERMISSION.

>> YES.

>> I MEAN PUT THEM TOGETHER AND VIRTUALLY THE SAME LANGUAGE JUST THOSE TWO THINGS, ARE DIFFERENT.

>> YES.

>> DOESN'T TALK ABOUT SERVICES.

>> NO.

>> DOESN'T TALK ABOUT ANY OTHER CHARACTERISTICS.

>> NO.

>> OKAY.

SO MY CONCERN IS IS -- DO THESE HEARINGS GET INTO TALKING ABOUT OR WHAT SERVICES ARE PROVIDED AT ONE AS OPPOSED TO THE OTHER, AND THIS ONE HAS MENTAL HEALTH SUPPORT THAT ONE DOES -- GIVES MENTAL HEALTH SUPPORT FIVE DAYS A WEEK I CAN'T FIND THAT FROM THE STATUTE.

IS IN IT RULES OR REGULATIONS ANY PLACE?

>> NO.

>> SO THEN, I HAVE A DIFFICULT TIME, BECAUSE THE LEVELS OF RESTRICTIVENESS RELATE ONLY TO RESTRICTIVENESS, AND SO YOU HAVE TO LOOK AT WHAT THE PROBLEM IS, THAT FACING AND HERE WAS BEING UNGOVERNABLE, RUNNING, AND ACCESS TO DRUGS ASSUME YOU HAVE LESS ACCESS TO DRUGS IF YOU DON'T HAVE ACCESS TO THE COMMUNITY, THESE KINDS OF THINGS, SO I'M TRYING TO FIND YOU SEE ALL THIS IS DEVELOPING -- I'M NOT SEEING

THIS DEVELOP SEEMS TO AGAIN,
COME BACK TO A PLAY ON THE
WORDS, IF THOSE REASONS GIVEN
DON'T MATCH FOR A A HIGHER
RESTRICION, THEN THIS WOULD
HAVE TO BE REVERSED IT WOULD
SEEM.

>> I WOULD THINK IN CASES THAT
MAY HAPPEN I THINK THE CASE
LAW HAS DEVELOPED, WHAT
REASONS ARE PROPER, A JUDGE
CANNOT JUST GIVE ANY REASON,
FOR DEPARTING CASE LAW
DEVELOPED IN SUCH THEY HAVE TO
BE VALID REASONS AND I THINK,
ESPECIALLY IN THIS CASE, THE
JUDGE GAVE VALID REASONS, THAT
IS NOT AT ISSUE HERE.

WHAT IS
AT ISSUE HERE IS SIMPLY THE
FACT THAT THE TRIAL
JUDGE DID NOT CONTINUE AFTER
GIVING THE REASONS AND SAY
THEREFORE A LEVEL -- A LEVEL EIGHT
IN THIS CASE WOULD BE BETTER THAN
A MODERATE RISK, AND HERE IS
WHY --

>> IN THE JUDGE'S ORDER, THE
JUDGE'S REASONING, THAT
DIFFERS FROM I GUESS
MY -- MY PROBLEM
IS THIS.

IT SEEMS TO ME THAT DJJ AND
THE WHOLE TEAM THAT -- THAT
DID THE -- WHAT DO YOU CALL IT
YOU PRESENT TO THE JUDGE?

>> PREDISPOSITION REPORT.

>> IT SAID IN THIS ORDER
BECAUSE OF ALL THESE THINGS.
SO WHY WHEN THEY CONSIDER ALL
OF THOSE ITEMS YOU GET TO THE
MODERATE RISK, AND WHY WHEN YOU
GET TO ALL OF THOSE ITEMS THE
JUDGE COMES UP WITH THE HIGHER
RISK?

I GUESS SHOULDN'T
THERE BE SOMETHING IN THAT
ORDER THAT DIFFERS FROM WHAT
THE PREDISPOSITION REPORT WAS,
SO THAT WE CAN SAY, WELL, YES,
HERE IS THE REASON THAT A LEVEL
8 IS MORE APPROPRIATE THAN THE

LEVEL 6?

>> AND WE HAVE THAT HERE.

IN THIS CASE THE JUDGE
CONSIDERED PREDISPOSITION
REPORT AS WELL AS TESTIMONY
FROM THE PROBATION OFFICER AS
WELL AS TESTIMONY FROM THE
FOSTER MOTHER I THINK IT'S
EXCEPTIONALLY IMPORTANT IN THIS
CASE TO REFER TO THE
PREDISPOSITION REPORT BECAUSE I
CAN READ DIRECTLY FROM PAGE 49,
WHERE IN THE PREDISPOSITION
REPORT DEPARTMENT OF JUVENILE
JUSTICE THE YOUTH'S SIGNIFICANT
NEEDS INCLUDE THE GANG
ASSOCIATION AS WELL AS REPORTS
OF VIOLENT OUTBURSTS AND THE
POTENTIAL FOR HARM NOT INCLUDED
IN THE CRIMINAL HISTORY.

HOWEVER, WHEN YOU READ THE
RECOMMENDATION, OF THE
DISPOSITION REPORT, THERE IS NO
REFERENCE, TO THE VIOLENCE THAT
HAS BEEN DISCUSSED BY
DEPARTMENT OF JUVENILE JUSTICE
WHEREAS THE TRIAL JUDGE IN THIS
CASE TOOK TESTIMONY BOTH FROM
THE FOSTER MOTHER AS WELL AS
PROBATION OFFICER REGARDING
THIS JUVENILE'S HISTORY AND
REFERRED TO THE VIOLENCE IN
PREDISPOSITION REPORT AND
DEPARTED TO LEVEL 8.

I THINK THAT IS EXACTLY WHAT IS
REQUIRED THE STATUTE.

THE JUDGE SAID I'M GOING TO PUT
HIM IN A LEVEL 8.

HERE ARE MY REASONS.

THAT IS WHAT THE STATUTE --

>> THIS PROBLEM IS NOT THAT
THERE AREN'T DIFFERENT REASONS GIVEN.

JUST THE DIFFERENT REASONS
AREN'T COUCHED IN THE TERMS OF
VIS-A-VIS NEEDS OF A CHILD.

>> I THINK THAT'S EXACTLY THE
CASE.

>> LET'S TALK ABOUT THE STATUTE
FOR A SECOND, WHERE IT SAYS,
THE TRIAL JUDGE MAY ORDER
PLACEMENT AT A DIFFERENT
RESTRICTIVENESS LEVEL.

SO THE TRIAL JUDGE BY STATUTE
AS THE DISCRETION TO ORDER TO A

DIFFERENT LEVEL, RIGHT?

>> YES.

>> NOW, THE CASE LAW IS DEVELOPED THROUGH JUDGE GRIFFIN'S DISSIDENTING OPINION IT HAS TO BE COUCHED IN TERMS OF NEEDS OF A CHILD.

IF IT'S NOT THAT, WHAT, WOULD BE THE LEVEL OF REVIEW THAT IS A APPELLATE COURT SHOULD BE LOOKING AT? CAN A TRIAL JUDGE SAY, WELL IT'S SUNDAY TODAY. I'M GOING TO GIVE YOU A DIFFERENT RESTRICTIVENESS LEVEL?

>> NO.

I DON'T THINK IS ANTICIPATED NOR IS IT ALLOWED BY THE CASE LAW.

THE CASE LAW REQUIRES A VALID REASON.

>> LET'S GO BACK TO THE STATUTE.

WHAT WOULD GUIDE, IF NOT THE NEEDS OF A CHILD, WHAT LEVELS OF REVIEW WOULD THERE BE?

>> I THINK EXACTLY WHAT WE HAVE IN THIS CASE.

THE STATUTE SAYS WHAT THE JUDGE CAN DO.

I THINK IT'S IMPORTANT TO REMEMBER THE DEPARTMENT OF JUVENILE JUSTICE AND THE JUDGE HAVE TWO DIFFERENT ROLES. THE OF JUVENILE JUSTICE IS REVIEWING AND RECOMMENDING WHAT THEY BELIEVE THIS CHILD NEEDS.

WE'RE NOW HERE AT A DISPOSITION HEARING WHERE A JUDGE HAS A DISCRETIONARY ROLE TO REVIEW NOT ONLY THE RECOMMENDATIONS OF THE DEPARTMENT, BUT TO ALSO HEAR ADDITIONAL EVIDENCE.

I THINK THE STANDARD IS DID THE JUDGE ABUSE HIS DISCRETION WHEN HE VIEWED THE EVIDENCE PRESENTED AS WELL AS DISPOSITION REPORT.

>> IS THERE SOME KIND OF NOTICE THAT THE JUVENILE'S COUNSEL HAS, WHEN THEY WALK INTO THIS COURTROOM THAT THEY'RE GOING TO BE SUBJECT TO SOMETHING DIFFERENT THAN THIS DISPOSITION

REPORT THAT SUPPOSEDLY HAS BEEN
DONE BY EXPERTS SO THAT THEY
COULD PREPARE FOR THOSE, OR
PREPARE EVIDENCE FOR THOSE?
IS THERE ANYTHING LIKE THAT
THAT GOES ON?

>> I DON'T BELIEVE THERE IS A
NOTICE.

I BELIEVE IT'S RECOGNIZED IN
LIEU OF SENTENCING THE UNDER
THE STATUTE THE JUDGE CAN
DISREGARD THE RECOMMENDATION.
THE COUNSEL IN THIS CASE --

>> YOU DON'T KNOW GOING WHETHER
THE STATE IS GOING TO FIGHT IT
OR, I'M TRYING TO GET A FEEL
WHAT IS GOING ON IN THESE
PROCEEDINGS.

>> IT'S A DISPOSITION
PROCEEDING.

I THINK, I DON'T KNOW THAT
COUNSEL KNEW OR DIDN'T KNOW IN
THIS CASE.

I'M REALLY NOT QUITE SURE
HOW --

>> IN GOOD FAITH THE PUBLIC
DEFENDER WOULD COME IN AND
MAKES THE ARGUMENT.

THESE PEOPLE ARE DEDICATED
FOLKS.

THEY'RE TRYING TO DO THEIR JOB
CORRECTLY, MADE THE ARGUMENT
THAT SOMETHING TO THE EFFECT
THAT REALLY THE SERVICES AREN'T
THE SAME. OKAY?

AND, IF THAT PUBLIC DEFENDER
HAD KNOWN AHEAD OF TIME, WE
DON'T WANT TO GO TO THE COST OF
EXPENSE BRINGING WITNESSES IN
TO PROVE THAT IF IT'S NOT GOING
TO BE NECESSARY.

BUT IF IT IS THEY SHOULD KNOW
THEY'RE GOING TO HAVE TO PROVE
THAT IN SOME WAY.

SEEMS TO ME OUT OF A SENSE OF
FAIRNESS AS THIS THING IS GOING
FORWARD, BECAUSE, IN MY VIEW
THIS JUDGE LOOKED AT THE
DISPOSITION, THE REPORT, AND
THEN, CAME TO A DIFFERENT
CONCLUSION, BASED UPON
BASICALLY THOSE FACTS, NO, THIS
KID, YOU NEED TO HAVE LESS
ACCESS TO THE COMMUNITY.

THAT'S A FUNDAMENTAL BASIS
HERE.

BUT I DON'T KNOW THAT THE
JUVENILE HAD THE OPPORTUNITY,
SOMEHOW TO SHOW THIS OTHER
ASPECT OF HIM REHABILITATIVE,
THAT IT'S NOT GOING TO BE IN
THE CHILD'S BEST INTEREST.

AM I COMMUNICATING THE
QUESTION, MY CONCERN?

>> I UNDERSTAND.

STOP ME IF I'M GOING TOO FAR
AFIELD.

>> OKAY.

>> I THINK WE'RE GETTING LOST
IN THE FACT THIS IS NOT
STAFFING WHERE YOU DETERMINE
WHAT THE RECOMMENDATION IS
GOING TO BE.

>> OH, NO, I UNDERSTAND THAT.

>> IT'S JUST A RECOMMENDATION.

>> THERE IS RECOMMENDATION
ALREADY.

>> AND WE COME TO COURT AND THE
PUBLIC DEFENDER WAS ABLE TO
CROSS-EXAMINE BOTH THE
PROBATION OFFICER, AS WELL AS
THE --

>> THERE WAS NO EVIDENCE PUT ON
WITH REGARD TO THE SERVICES AT
THESE RESPECTIVE LEVELS, WAS
THERE?

>> NO.

>> THAT IS WHAT WOULD CONCERN
ME, YOU OUGHT TO HAVE THAT
OPPORTUNITY, SHOULD YOU?

>> FRANKLY I DON'T BELIEVE
ANYBODY THINK THERE IS
DIFFERENT SERVICES.

>> IF THAT IS THE CASE, WE'RE
JUST TALKING ABOUT ACCESS.

>> ARE WE ALSO TALKING ABOUT,
WOULD YOU DISAGREE WITH,
ALTHOUGH THE, HAVE THE
DISPOSITION, THAT AT A LEVEL 8,
WHAT SHE SAID, I JUST WANT TO
MAKE SURE, IS THAT THE LENGTH
OF THE SENTENCE WOULD BE
BETWEEN FOUR AND SIX MONTHS.
AND THAT AT LEVEL, THE HIGHER
LEVEL IT WOULD BE LEVEL 6,
MODERATE LEVEL, BETWEEN EIGHT
TO 12 MONTHS.

IS THAT, IS THAT CORRECT?

>> I DON'T KNOW THAT OFF THE TOP OF MY HEAD, HOWEVER, I THINK AGAIN, WE NEED TO REMEMBER --

>> AGAIN, NOW YOU'RE SAYING, IN ANSWER TO JUSTICE LEWIS'S QUESTION IS THE SAME AND SERVICES ARE THE SAME AND IT'S JUST ABOUT ACCESS TO THE COMMUNITY?

AND NOW HERE'S A CRITICAL QUESTION ON DUE PROCESS, WHETHER A CHILD IS IN A RESTRICTED ENVIRONMENT FOUR TO SIX MONTHS OR EIGHT TO 12 MONTHS.

IN A CHILD'S LIFE, THAT IS A HUGE TIME.

IT SEEMS THAT KNOWING THAT, AND A JUDGE KNOWING THAT, THAT HAS, WHEN THE JUDGE GRIFFIN OR HOWEVER THEY HAVE DEVELOPED THIS, TALKING ABOUT THE CHARACTERISTICS OF THE RESTRICTIVENESS LEVEL, SEEMS TO ME THE TIME THAT THEY FELT WAS NECESSARY TO GET THIS CHILD BACK ON TRACK WOULD BE PART OF THE CHARACTERISTICS OF THE RESTRICTIVENESS LEVEL?

>> AND I UNDERSTAND THAT POSITION, IN THIS SITUATION THAT'S DEPARTMENT OF JUSTICE'S RECOMMENDATION.

THE TRIAL JUDGE HAS A --

>> DO YOU KNOW, REPRESENTING THE STATE, WHETHER THE IMPLICATION OF THIS JUDGE'S DECISION LINKS IN THE EFFECTIVE RANGE IN WHICH THIS JUVENILE COULD BE RESTRICTED?

>> YES, IT DID.

WHICH GOES DIRECTLY TO THE PROTECTION OF THE PUBLIC ASPECT OF THE JUDGE'S ROLE WITH RESPECT TO THIS ISSUE.

THE JUDGE IN THIS CASE, IS NOT SOLELY CONSIDERING THE REHABILITATIVE NATURE.

THE JUDGE HAS TO CONSIDER THE DEPARTMENT'S RECOMMENDATION AS WELL AS PROTECTION OF THE PUBLIC AFTER TAKING ADDITIONAL EVIDENCE WITH RESPECT TO THE

DISPOSITION.

SO I THINK IT'S, WE NEED TO REMEMBER THAT THE ROLES ARE NOT IDENTICAL.

THE JUDGE IS GIVEN GREAT DISCRETION AND THE JUDGE IN THIS CASE, HIS ROLE IS NOT THE SAME AS THE ROLE OF THE DEPARTMENT OF JUVENILE JUSTICE. IT'S IMPORTANT TO NOTE THAT COUNSEL TALKS ABOUT THE STATUTE.

>> DON'T YOU THINK, AGAIN I UNDERSTAND THE JUDGE'S ROLE IS NOT THE SAME.

OBVIOUSLY THE JUDGE IS NOT THERE TO BE A RUBBERSTAMP. THE JUDGE IS THERE TO MAKE A CONSIDERED JUDGMENT.

BUT WHAT WE DON'T WANT TO, JUDGE BAKER AND ALL THE JUDGES THAT I KNOW IN JUVENILE, THEY'RE WELL-MEANING.

WE KNOW THESE ARE COMING FROM WELL-MEANING PEOPLE.

WITH YOU DON'T WANT TO SOMETHING TO HAPPEN DIFFERENTLY IN JUDGE BAKER'S COURT OR OVER IN JUDGE FIELD'S COURT IN THE SECOND DISTRICT.

THE SAME, SOMEBODY HAS THE SAME ESSENTIAL CHARACTERISTICS.

THAT'S WHY THE UNIFORMTY BECOMES IMPORTANT.

SO WHAT I, SHOULDN'T AS PART OF THESE CHARACTERISTICS OF THE RESTRICTIVENESS LEVEL, SHOULDN'T THE JUDGE HAVE TO SAY THE VALID REASON IS SPECIFICITY SAY, AND I THINK THIS JUVENILE NEEDS A LONGER PERIOD IN WHICH TO GET HIS ACT IN ORDER?

>> I WOULD HAVE TO ANSWER NO. THE STATUTE, IN AND OF ITSELF, 985 AS A WHOLE, IS VERY DISTINCT. IF THE STATUTE IS FOLLOWED THE UNIFORMITY WILL HAPPEN.

THE PROBLEM OCCURRED DCAs WHO FOLLOWED A DISSSENT, ESSENTIALLY HAVE CHANGED THE STANDARD AND NOW WE HAVE JUDGES DOING DIFFERENT THINGS.

BUT IF THE STATUTE ITSELF IS FOLLOWED TO THE LETTER OF THE

LAW, I THINK THAT THE TRUE
PURPOSES OF CHAPTER 985 WILL BE
HAPPENING.

WITH THAT SAID, IF THERE ARE NO
FURTHER QUESTIONS, I WOULD ASK
THAT YOU AFFIRM.

>> THANK YOU VERY MUCH.
APPRECIATE BOTH OF YOUR
ARGUMENTS.

THE COURT WILL BE IN RECESS.

>> PLEASE RISE.